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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,322	01/16/2001	Robert F. Gehan	Kraft 76590 US	4644

37138 7590 03/12/2007  
THADDIUS J. CARVIS  
102 NORTH KING STREET  
LEESBURG, VA 20176

EXAMINER
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TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

09/761,322

Applicant(s)

GEHAN ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____  |


In view of the remand by the board on 1/4/07 to reconsidered the rejection based upon the references cited by the board, PROSECUTION IS HEREBY REOPENED. The rejections are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

  
MILTON I. GANO  
SUPERVISORY PATENT EXAMINER  
ART UNIT 1761

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how claim 3 further limits claim 1 when claim 1 already recites that the base cake has a three dimensional image thereon.

Claims 1-3, 5-9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boehm et al in view of Concepcion et al and Hanson.

Boehm et al discloses on column 1 lines 1-10, filled sandwich cookies Oreo are known. These cookies are sandwich cookies having filling layer between two base cake layers. The cookies are coated with various chocolate and fudge coatings,

Boehm et al do not disclose that the cookies have a three-dimensional image thereon.

Hanson discloses a sandwich cookie having three-dimensional image on the surface of the base cake layer.

Concepcion et al disclose a sandwich cookie having a three dimensional image on the base cake layer. ( see figure 1)

It would have been obvious to form the base cake layer for the cookie disclosed in Boehm et al to have a three dimensional image as shown by Hanson and Concepcion et al to form cookies having different ornamental designs. The function of revealing the image as the confection coating is consumed is inherent in the product disclosed by Boehm et al when the base cake layer is formed to have image as shown by Hanson and Concepcion et al. It would have been obvious to make the filling out of fat and sugar because that are the commonly used ingredients for confectionary cream such as the one in Oreo cookies. As to the image being a carton figure, it would have been obvious to make the image in any desired configuration depending on the appearance wanted. This would have been an obvious matter of choice.

Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boehm et al in view of Concepcion et al and Hanson as applied to claims 1-3, 5-9 and 11-13 above, and further in view of Pappas et al.

Persson and Blaschke et al do not teach forming the picture by rotary molding.

Pappas et al teach to form designs on foods such as cookies, crackers and

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snacks using rotary molding. (see abstract)

It would have been obvious to one skilled in the art to use any known method to make the design on the cookie. It would have been obvious to use rotary molding as taught by Pappas et al to make the picture on cookie because they teach such method is used to make designs on cookie product.

Claims 1-3, 5-9 and 11-13 are rejected under 35 USC 103(a) as being unpatentable over Persson in view of Blaschke et al and Gerstman et al and Hanson.

Persson discloses a sugar confectionery which has printed picture on the surface. The picture is covered with an opaque coating and the coating is licked off by the consumer to reveal the picture. The opaque coating can be chocolate, fondant coating, and opaque boiled sugar coating etc.. The picture is made on a wafer and the wafer and toffee may be shaped to resemble a television set and to make it apparent which is the side to be licked in order to disclose the picture. ( see pages 1-4)

The Persson product and method differ from the claimed product and method in that the product is a sugar confectionery and not a cookie and Persson is silent as to whether the image is three dimensional

Blaschke et al disclose a ready-for-use cookie dough which is provided with score lines or grooves that define equally sized portions to be broken off and baked to form individual cookie. ( see col. 1 lines 40-43)

Hanson discloses a sandwich cookie having three dimensional image on the surface of the base cake layer.

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Gerstman et al disclose a sandwich cookie having a three dimensional image on the base cake layer. ( see figure 1)

It would have been obvious to change the substrate in Persson from a candy to a cookie to obtain a novelty cookie product. Candies and cookies are routinely consumed by children; thus, the playful idea of licking to reveal picture taught by Persson will be equally appealing to children when it is applied to a cookie product. It would have been obvious to apply the teaching of Persson to the Blaschke et al cookie to obtain novel cookie product that is appealing to children with its playful image revealing. It would also have been obvious to one skilled in the art to form a cookie from two cookie bases adhering to a layer of confection to form cookies having different flavor and taste; this type of sandwich cookie is well known in the art. Confection cream containing fat and sugar is well known in the art as admitted by applicant in the specification. It would have been obvious to put a layer of confection over the picture as taught by Persson to form a hidden image to appeal to a sense of playfulness while eating to children. It would have been obvious to one skilled in the art to form a three dimensional image as shown by Hanson and Gerstman et al to form cookies having different ornamental designs. As to the image being a cartoon, it would have been obvious to one skilled in the art to form any type of image depending on the creative design wanted; this would have been an obvious matter of choice.

Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Persson in view of Blaschke et al, Gerstman et al, Hanson as applied to claims 1-3, 5-9 and 11-13 above, and further in view of Pappas et al.

Persson and Blaschke et al do not teach forming the picture by rotary molding.

Pappas et al teach to form designs on foods such as cookies, crackers and snacks using rotary molding. (see abstract)

It would have been obvious to one skilled in the art to use any known method to make the design on the cookie. It would have been obvious to use rotary molding as taught by Pappas et al to make the picture on cookie because they teach such method is used to make designs on cookie product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wed-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 6, 2007

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
*Group 1700*